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Hermés of Paris, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HERMÉS OF PARIS, INC.,	:	
	:	Civil Action No. 1:16-cv-06255-CM-GWG
Petitioner,	:	
	:	Electronically Filed
- against -	:	
	:	
MATTHEW SWAIN,	:	
	:	
Respondent.	:	
-----	X	

**REPLY DECLARATION OF LAWRENCE R. SANDAK
IN FURTHER SUPPORT OF HERMÉS' PETITION TO COMPEL
ARBITRATION AND ENJOIN PENDING STATE COURT ACTION**

I, LAWRENCE R. SANDAK, make this Declaration pursuant to 28 U.S.C. § 1746. I hereby declare as follows:

1. I am an attorney-at-law licensed to practice in the State of New York and a member of the firm of Proskauer Rose LLP, attorneys for Petitioner Hermés of Paris, Inc. ("Hermés" or "Petitioner") in the above-captioned matter. As such, I am familiar with the facts and circumstances surrounding this proceeding and the facts set forth herein.

2. I submit this Reply Declaration in Further Support of Hermés' petition to compel Respondent Matthew Swain ("Swain" or "Respondent") to arbitrate his claims pursuant to 9 U.S.C. § 4 and to enjoin the pending state court action pursuant to 28 U.S.C. § 2283.

3. On August 5, 2016, Hermés filed with this Court a Petition to Compel Arbitration and Enjoin State Court Action, accompanied by a Notice of Petition, supporting Memorandum of Law and Declaration of Lawrence R. Sandak with exhibits (the “Petition”).

4. On August 8, 2016, Hermés, through a process server, attempted to personally serve the Petition upon Respondent at his home address.

5. Attached hereto as Exhibit 1 is a true and correct copy of the Affidavit of Richard Minervino, process server for DGR – The Source for Legal Support, which recounts Mr. Minervino’s attempt to serve Mr. Swain at his home address and Mr. Swain’s refusal to accept service.

6. After Mr. Swain refused to accept service at his home address, I received an email from Respondent’s counsel, Christopher Hager, dated August 8, 2016, confirming that Respondent “is represented by counsel” and demanding that Petitioner “cease and desist” any contacts with Respondent. Attached hereto as Exhibit 2 is a true and correct copy of Mr. Hager’s August 8, 2016 email, as referenced herein.

7. The next day, August 9, 2016, Mr. Hager and I spoke over the telephone. During that conversation, Mr. Hager expressly and unequivocally agreed to accept service on Mr. Swain’s behalf, via e-mail. I sent the Petition to Mr. Hager via e-mail, confirming that he had agreed to accept service of the Petition. Attached hereto as Exhibit 3 is a true and correct copy of the e-mail cover letter I sent to Mr. Hager, attaching the Petition.

8. Less than two hours after sending the Petition to Mr. Hager, he attempted to disavow his agreement to accept service. In an e-mail dated August 9, 2016, Mr. Hager wrote:

Larry, we object to the SDNY having jurisdiction over this matter, and Mr. Swain, which was pending in the NJ Superior Court before the Hermés petition was improperly filed, and is governed by NJ law. ... As a result, service cannot be effectuated as you

contend and anything filed in the SDNY to the contrary will be opposed.

Attached hereto as Exhibit 4 is a true and correct copy of the August 9, 2016 e-mail correspondence referenced herein.

9. Attached hereto as Exhibit 5 is a true and correct copy of e-mail correspondence between undersigned counsel, Mr. Hager and Joanne Saint Louis of the American Arbitration Association, dated August 10, 2016.

10. Attached hereto as Exhibit 6 is a true and correct copy a letter sent by the American Arbitration Association to Mr. Hager and undersigned counsel, dated August 11, 2016.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: Newark, New Jersey
August 30, 2016

/s/ Lawrence R. Sandak
Lawrence R. Sandak